



June 25, 1999

Ms. Regina Grimes
Office of General Counsel
Texas Department of Criminal Justice
209 W. 14th Street, Suite 500
Austin, Texas 78711

OR99-1781

Dear Ms. Grimes:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 125214.

The Texas Department of Criminal Justice (the "department") received a request for a copy of a specific internal audit report, as well as all information relating to the requestor. You claim that the requested information is excepted from disclosure under sections 552.103, 552.111, and 552.116 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, you argue that all of the submitted information may be withheld under section 552.103 of the Government Code. To show that section 552.103 is applicable, the district must demonstrate that 1) litigation is pending or reasonably anticipated and 2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the department must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

You state that the requestor, a department parole officer, supervised a releasee who allegedly killed a young woman. Based on this incident and the resulting internal investigation, the department disciplined or terminated several employees. You explain that the department anticipates that the disciplined employees and/or the decedent's family will file suit. This office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). It does not appear in this instance that any of the aggrieved individuals have taken steps toward filing a lawsuit. We conclude that you have not shown that litigation is reasonably anticipated; therefore, you may not withhold the submitted information under section 552.103.

Next, you argue that the submitted information is excepted from disclosure under section 552.111. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). It appears that the submitted documents involve internal administrative and personnel matters. Thus, the department may not withhold the submitted documents under section 552.111.

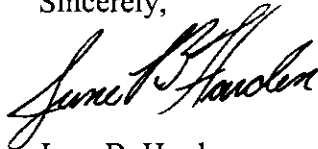
Finally, you claim that the requested information may be withheld under section 552.116. Section 552.116 reads as follows:

An audit working paper or draft audit report of the state auditor or of another state agency or institution of higher education as defined by Section 61.003, Education Code, is excepted from [required public disclosure].

After reviewing the submitted information, we agree that some of the records at issue constitute audit working papers and may be withheld. We note, however, that a completed audit made of, for, or by a governmental body is made public by the act. Gov't Code § 552.022(1). Therefore, assuming this document is not the completed audit, we conclude that the department may withhold the marked information under section 552.116 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" and last name "Harden" clearly distinguishable.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 125214

Encl. Submitted documents

cc: Mr. John Brady
3628 McCart
Fort Worth, Texas 76110
(w/o enclosures)